Case and Comment
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Legal Novels

By Hon. Charles A. Davis, Burke, S. D.

MOST of us like to read. Most of us find genuine recreation in literature. I believe it is safe to assume that this is true. I need not, therefore, spend any time restating the pleasure and satisfaction which good books afford. I wish, however, to call attention to a type of reading that should be especially alluring to members of our profession—the legal novel. And in speaking of legal novels, I do not mean merely those novels which are devoted almost entirely to law and lawyers. The field is broader than that. It includes many of the great masterpieces of fiction, because it includes, as I think of it, all those novels in which, to any substantial degree, lawyers or legal proceedings or legal institutions play a distinctive part. And the field of the legal novel so defined seems to me to be a rich one for the lawyer who appreciates good literature.

It may or may not surprise you to be told that the number of such books is legion. The reasons, however, are apparent. Consider, in the first place, how large a part legal institutions play in human life. We are all familiar with the growing complaint on this score. Perhaps never before has the government, the machinery of law, been so much and often so painfully in evidence as it is today. Yet always the legal and governmental system is a large factor conditioning the general situation, the state of things that a literary artist finds about him, surveys and pictures. Property rights and fundamental institutions are defined and protected by law. To a great degree they are the creatures of law. The law takes a hand in the most universal human relations. Because it is as much a part of our environment as is the air we breathe, it is naturally a vital element in the scenes wherein a novelist's characters move.

Then, too, merely as phenomena in themselves, the operations of the law have much to attract a novelist. They are surrounded with a dignity and often a mystery that exalt them above commonplace things. The trial of cases in the courts may provide the most powerful drama. In the incidence of law upon human affairs there is often something akin to the

sweep of the forces of nature, and sometimes the very essence of tragedy. To all this the man of letters is sensitive. Thus Victor Hugo conceived of an all-consuming, merciless force which, once set in motion, was inescapable, insatiable. This force was launched against Jean Valjean because, driven by hunger, he stole a loaf of bread. Here the author had all the elements of great drama—not just one man against another, but a great force against a powerless man. "Les Miserables" is the result. Much the same conception of law animates a more recent novel, "An American Tragedy,' by Theodore Dreiser. In this book a young man's social ambitions are threatened by his indiscretions and he is led to murder as the way out. The inevitable discovery, prosecution and conviction, and the final tragedy in the death house, are vividly and powerfully portrayed. We are made to feel deeply the conception of the law as almost a personified force seeking out and destroying one who flaunts it.

Then, too, the law gives a novelist an infinite variety of character types. Like religion, the law has a corps of devotees of all grades and degrees, who translate it into concrete reality. There are the judges, the attorneys and the hangers-on about the courts, the litigants, and countless others. And what "finds" there are among the lawyers alone!

Most of you are familiar with what Arthur Train has done with such material. In Mr. Tutt he has created a lawyer for whom, at least in many of his characteristics, we can all find doubles among our acquaintances, and whom we feel as a real person, one of us. Arthur Train's minor characters, too, are around us in every court. We know them in advance of meeting them through his studies. The sharp practitioner, the "shyster," the man who, for a fee, can see black in white and make others see it—these types move through the pages of literature in great numbers.

The lawyer has always figured in literature. Shakespeare had need of a lawyer and created Portia, whose adroit turning of Shylock's literalness against him always gives one a feeling of pleasure. That, too, has been repeated in essence time and again.

Balzac, considered by many one of the greatest of novelists, was trained as a lawyer. His books depict lawyers of every type, good and bad. Sir Walter Scott, too, was a barrister. In his gallery of character portraits we find likenesses of many of his professional colleagues. And so instances might be multiplied.

Even ordinary people take on new aspects in relation to the law. They become witnesses, parties, jurors, and adapt themselves in strange ways to their unaccustomed rôles. Thus Mr. Pickwick found himself in the toils of the law, and in his relation to the law Dickens causes us to know Mr. Pickwick in a new and more intimate way. Jeanie Deans, the heroine of Scott's Heart of Midlothian, finds the supreme test that reveals her nobility of character when the law breaks into her life and she defeats the urge to testify falsely and yet hesitates at no sacrifice to avert the law's penalty from her sister. It is in a court scene, too, that Jean Valjean triumphs at a crisis of his life.

Not only do we find law itself as a force or character which the law provides appearing in fiction, but legal proceedings are frequently depicted as incidental to a story. Thus John Galsworthy, whose novels are outstanding in an age that may leave few literary treasures, seems to find a special fascination in the law. He wrote a powerful play about the criminal law and called it "Justice." In it he pictured the tragic effect and harsh operation of the penal system on a man. And a Galsworthy novel does not seem to belong unless it has legal affairs in some profusion. Soames Forsyte, the solicitor and ultra-sound man of business, is perhaps the outstanding figure in the series of novels about the For-

syte family. Soames even delves into the rule against perpetuities for the edification of the reader, even though it must be admitted that the will the author draws does run somewhat afoul of the rule. In the "White Monkey" as well as in the delightful play, "Old English," we are treated to most amusing directors' meeting, revealing to students of human nature as well as of corporate practice. His last novel, "The Silver Spoon," is taken up very largely with the progress of an action for slander. And Galsworthy knows the law of slander and of evidence. His court pictures ring true. That, by the way, is more than can be said of the achievements of many dramatists and of nearly all movie directors. In this connection, too, I wish to refer to an unusual play in which no less an actor than E. H. Sothern was quite successful a year or more ago. This was a translation from a French play and was called "The Advocate." It was concerned wholly with the ethical problem, Is a lawyer justified in defending a person he knows to be guilty and in telling the jury that he believes the client —in this case a woman—is innocent? The lawyer, it seems, held high standards and had been trained in a noble tradition. He was so looked up to that his assurance that he believed in the merits of a client's cause carried conviction to a tribunal. Should he take advantage of his reputation to save one he loved? The working out of that problem deeply interested audiences that were not made up of lawyers.

The list of novels and plays wherein the law and its ministers play a prominent part is too long to permit of anything approaching a complete enumeration here.

To those who are unfamiliar with the field but wish to enter upon it, I recommend an article by Dean Wigmore of N. W. in the Illinois Law Review for May, 1922. This article not only discusses briefly the types of novels included within this group, but contains an excellent list of one hundred legal novels.

I have indicated rather sketchily the extent of the field and the reasons for its being what it is. Now I wish to ask and try to answer in part the question, Why should a lawyer read somewhat widely in this field? I have no hesitation in saying that I think such reading is to be recommended. What then are the reasons?

In the first place I think the enjoyment which such reading affords is its sufficient justification. In literature we live often more fully than in reality because we are released from ourselves and live with great spirits in scenes above the commonplace. So to live is its own justification. And who is in a better position to enjoy legal novels than a lawyer? A good lawyer has to have imagination. In that he is akin to an artist. At least it helps him to appreciate literature. Then, too, he knows the field. One whose experience has familiarized him with the scenes and the people and the types of experiences of which a novelist writes can appreciate the novelist's portrayal of these things more fully than anyone else. And, though too much talking of "shop" is in bad taste, and is narrowing in its effects, who does not like to indulge in it somewhat? Thus the lawyer who likes to exchange with fellow lawyers stories of his professional experiences has a treat in store for him when he turns to literature of the sort I have been describing. And, after all, life consists to a great extent in the accumulation of pleasant experiences. I read novels because I like them, and legal novels because I like them especially, because they are especially stimulating and refreshing. That, I think, is reason enough.

But if we must find practical reasons and justify our preferences with serious persons, we can do so without difficulty. A broad, general reading, a background more extensive than that afforded by the specialized study of statutes and reports, is essential to a lawyer's fullest development. There is a tendency to become so absorbed

in details, in small corners, disconnected fragments of the law, that we cannot, to use a trite phrase, see the forest for the trees. Yet we cannot overlook the ethics of the law; the unity of the profession, the social responsibility of administering a great machine of justice and of furthering the orderly development of a legal system adequate to modern needs. To meet these larger responsibilities, we need to read widely, to dip into many fields of knowledge. And so I might with good reason advocate that we read the works of scientists and philosophers, economists, students of politics and the like. But I can touch only one or two of the many fields in which the lawyer will find grist for his mill. I should like to emphasize that above all these things a lawyer needs to understand human nature. To the trial lawyer such an understanding is particularly essential, but to all of us it is important because we deal with the affairs of men and women in their social and business relations. Analysis reveals that knowledge consists in a series of deductions and generalizations from concrete cases. The larger the number of instances observed and correlated, the more accurate and complete will be the generalizations. Yet the contacts which one man can have are necessarily limited. We cannot rely solely on our own experience. In great works of fiction we can see countless phases of human life that would be unlikely to come under our own observation, at least until we meet them, when we need to have an advance knowledge of them. In books we share the experiences of men and women peculiarly gifted with insight into human conduct and with ability to present their observations for the benefit of the rest of us. C. Alphonso Smith, head of the department of English at the United States Naval Academy, has defended this idea at length in a book entitled "What Can Literature Do For Me?" He says:

"The knowledge that we get from everyday experience may be good as far as it goes, but it does not go far enough. It is neither broad enough nor deep enough. To make it broader and deeper we must go to the great laboratory of character creation that the masters have fitted up and made accessible to us in literature."

Then he notes the fact that Shakespeare alone has created 246 distinct characters, George Eliot 107, Dickens 102, and Thackeray 40. Here alone is a company of people from whom a great deal can be learned—a company that few of us can parallel in number, to say nothing of variety and significance, in our own experience; at least, few of us have known intimately such a group. Of course, as Mr. Smith says, "the study of human nature in books is solely to the end that it may be better studied in life." But who can deny the value of its study in literature? And, if the lawyer is especially in need of such study, does it not stand to reason that the novels which deal with people in their relations to the law are the most valuable in this respect?

Indirectly, too, such studies are valuable. We read of a situation and ask ourselves what we should do in a similar situation. Then our critical faculties are aroused. We test the author's impressions of human conduct by our own, and we are induced to think a little. And what a fine thing it is to think! So it will frequently happen that our ideas of a given aspect of human conduct will be clarified and corrected merely by the reflection induced by reading a novel. Similarly, a novel may in some cases contribute to actual legal learning—not usually in a direct way, but indirectly. Almost every one of the delightful Tutt stories is built upon some specific legal problem or legal doctrine. One deals with the criminal law, another with wills, another with evidence, and so on. The presentation of the problem normally, I think, stimulates a lawyer to think about it. He forms his own solution. He notes the author's solution. Perhaps he is moved to look up the matter a little. In all probability collateral problems are

suggested. Then, too, a problem thus thought out and its collateral suggestions is associated with a striking incident and, of course, is more strongly impressed on one's memory, perhaps, than if the same problem had been discussed with great learning in a legal periodical. It is the old and eminently successful method of teaching by a parable or a metaphor that I suggest we ought to try on ourselves.

In the field of professional ethics it is particularly true that we may find problems of conduct presented in novels. A thoughtful lawyer, it seems to me, will ponder such a problem and determine, tentatively at least, what he would do were he called upon to face it. And can we doubt that these tentative solutions of hypothetical cases will come back if the same problem in fact arises and may form the basis of conduct then? It is valuable to have had them worked out, not under stress, but in deliberate thought in connection with a leisurely evening's reading. Then, too, it must be said that, whatever may be their attitude toward human shortcomings in general, fiction writers have shown a most wholesome intolerance for the sins peculiar to lawyers in their professional life and have honored lawyers whom we ourselves should honor. In this respect, too, we may all profit by such reading, just as we profit by the examples of lawyers of the highest type whom we meet in the course of our practice.

Just as a matter of knowing history, there are some novels about the law that a well informed lawyer will want to read. The history of the law and its institutions, so vital to an understanding of present legal problems, may be read in part in fiction, for historical novels are often very accurate indeed in portraying their background of fact. And how much more vividly we see the part when it is presented to us in this form. I believe my ideas of the American Revolution are derived far less from formal histories than from an old book of stories about Washington and La Fayette and General Gage and Francis Marion—a book now out of print, called "Campfires of The Revolution." So we may see in novels how the law was administered in many ages; how revolutionary tribunals dealt out rough justice in France, in "A Tale of Two Cities;" how cruel were the penalties for slight offenses in medieval England, in "The Prince and the Pauper;" how secret tribunals, not unknown today, made a mockery of justice in Germany centuries ago, in "Anne of Geierstein;" how Judge Jeffrey conducted his "bloody assizes" in Conan Doyle's "Micah Clarke" or Blackmore's "Lorna Doone;" how in more recent times English justice is not obstructed by petitions and pardons in Arnold Bennett's "Old Wives' Tale," and so on. Some of them have been in themselves factors in making history. We do not ordinarily think of "Uncle Tom's Cabin" as a legal novel; yet its theme was an institution sanctioned and protected by law. Reliable historians attribute to this book a great share in preparing public opinion to fight the Civil War. It is generally recognized, too, that Charles Dickens's famous description of the delays and technical devices of the English chancery practice, as shown in the case of Jarndyce v. Jarndyce, which figures in "Bleak House," did more than countless serious discussions to speed the reforms which swept away these ancient abuses. A former president of the American Bar Association, Hampton L. Carson, has written an interesting tribute to Dickens and commentary on "Bleak House" from this point of view. Mr. Frank J. Loesch, of the Chicago Bar, in an article in the Illinois Law Review, notes the fact that Charles Reade went to great pains to get the facts about current abuses in private hospitals for the insane and in the laws relative to them, and then presented so vivid a picture in his novels that public opinion was stirred to demand reform. And I want to pause here to acknowledge my indebtedness to Mr. Loesch's article, not only for suggesting to me

a theme, but for furnishing many ideas which I have tried to develop along different lines in this discussion.

It seems to me, however, that I have not yet mentioned the strongest reason why all of us should read novels about lawyers and legal institutions. Bobbie Burns put that reason very well in two familiar lines:

"Oh wad some power the giftie gie us
To see ourselves as others see us."

Undoubtedly the general public impression of lawyers is formed quite largely by the characterization found in literature. I have no doubt that one reason so many people think of lawyers as shrewd fellows who, for a fee, will argue that black is white, is that such is the lawyer of popular fiction and drama. And it is worth while to us to know the sources from which people get their ideas of us. Some, if not most, of the pictures presented are prejudiced and warped. But people read them and believe them. Others are not warped at all, but are very true, perhaps too true. And we need to read and re-read them. Our complacency needs to be challenged by them. We need to ask ourselves, Are we like that? And if we answer the question honestly, we shall have to admit often enough that we are. Then we should ask and answer with equal honesty, Is it well that we should be like that? To ask and answer such questions is eminently good for us. We should never be satisfied with ourselves. We should seek to go forward and rather than be irritated by fair-minded criticism, welcome it and profit by it.

I have given you a few reasons which seem convincing to me why it is worth while to read novels about law and lawyers. I hope that I have also pictured the field as an attractive one. To me it is very inviting. I believe it will well repay in satisfaction and benefit frequent visits and some considerable devotion. As Dean Wigmore of Northwestern University has said:

"It is certain that a lawyer must abandon himself now and then to the lure of fiction. He will not read all the novels—even all the good ones; he will probably not read many. He must select. Let him, then, select those which will mean something to him as a lawyer, will have a special interest for one of that elect profession with all its traditions and its memories, its secrets of the craft."

—Address delivered before the South Dakota Bar Association, September 10th, 1927.

LAW AS A FACTOR OF HUMAN PROGRESS

The cultivation of the highest objects of existence, science, art and religion, is possible only under conditions which the law alone can bring about. To the extent that law operates to further these conditions it levels the road upon which science, art and religion celebrate their triumphal march.

The story of the race is a slow ascent from very primitive and crude beginnings to higher and even higher levels.

Three steps there are our human life must climb; of two of them only is it here pertinent to speak.

"The first is Force.
The savage struggled to it from the slime
And still it is our last, ashamed recourse."

"Above that jagged stretch of red-veined stone
Is Marble Law,
Carven with long endeavor, monotone
Of patent hammers, not yet free from flaw."

What is in truth a wrong not infrequently stubbornly appears with the form of a right. But wrongs and suffering are the soil upon which the flower of the law blossoms. If not in this day and generation, in another; for man is a temporal and limited being, and is not the measure of things.

—From address of W. M. Hendren, Esq., as President of the North Carolina Bar Association (1926).

Time Spent as Factor in Charges for Legal Services on Important Matters

By HENRY ADSIT BULL, of the Buffalo Bar

PERSONS in financial, business, and industrial organizations are accustomed to the idea of rating an individual according to salary received, and rating a position according to the salary it should carry for the work required. This paper aims to show the application of that idea as one basis for measuring the reasonable value of legal services on important matters receiving personal attention by one lawyer for a considerable time. Discussion may be conveniently divided under the following headings:

1. Ability required by the character of the work.
2. Ability of the lawyer actually employed.
3. Annual earning rating determined from the above.
4. Addition to cover lawyer's cost of doing business.
5. Maximum number of productive hours and basic hourly rate.
6. Allowance for hours necessarily yielding less than basic rate.
7. A proper hourly charge on important matters.

1. Ability required by character of work. A client may start by considering the salaries paid and work required by business positions with which he is familiar. By this standard he can form some idea whether the character of the work done or to be done for him requires the services of a lawyer whose ability he would rate as being worth more than a certain amount per year.

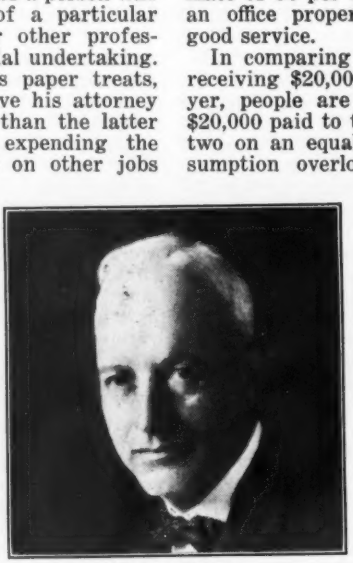
2. Ability of the lawyer actually employed. On important matters a client usually consults a lawyer with whom he is well acquainted and for whom he has some respect. Let him compare the ability, industry, and character of the lawyer with the same qualities in other friends and acquaintances and with the incomes they receive as a result of their work in business. From this can be estimated what the lawyer would be receiving if he had gone into business work with the same spirit and ability that he has put into the law. The incomes of the ablest of life insurance agents and of real estate brokers who receive 3 per cent commissions on sales also have some bearing. Fairness calls, however, for remembering that the lawyer spent several years of study and in apprentice work at nominal pay, while the man in business was drawing much larger pay annually for his work. This difference is the lawyer's invested capital, on which he is as much entitled to a return as is the business man on the investment of his savings. The law, also, does not present the opportunities that business offers for early savings and speculative gains. These considerations require that the annual earning rating of the lawyer should be substantially higher than the earned income of the business man for the current year; indeed, it should approximate the business man's income from earnings and from the investment of past savings.

3. Annual earning rating determined from the above. Normally this should be the higher of the two elements above considered. Quite impersonally, if element No. 1 is higher, the work should be paid for at what it is worth. If element No. 2 is higher, the client with a job to be done will consider whether he wants to seek a lawyer whose rating under 2 will be

the same as the work rating under 1; or whether he desires the services of a particular lawyer to the extent of being willing to pay what that lawyer's time is worth to himself. This aspect of the matter is merely an instance of the situation of a person who desires the services of a particular surgeon, architect, or other professional man for a special undertaking. On work such as this paper treats, no client wants to have his attorney get a smaller return than the latter would receive from expending the same time and effort on other jobs which he might have in his office.

4. Addition to cover lawyer's cost of doing business. Clients naturally have only a vague idea of this, which includes all operating expense except the personal services of members of the firm. In any law office such as we are now considering the fixed charges will run about 33 per cent of the gross receipts for services. To cover this expense one must, therefore, add 50 per cent to the figure reached as the conclusion of element No. 3 above. For instance, if element No. 3 is $24,000, the addition for overhead should be $12,000; this operating cost being one-third on a gross business of $36,000. Fluctuations of important work cause considerable variations of annual income, but generally an addition of 50 per cent should be made to element No. 3 to reach the basis on which a lawyer must charge to obtain the income allowed him as fair. This may seem large at first to the lawyer, but any business man caring to spend the time can estimate approximately the rent and clerk hire (which are always the main items) in any law office with which he may be familiar. He will not appreciate the cost of law books (averaging over $100 per sectional book case unit and many of them replaced by later editions every few years); but he will see that the estimate of 50 per cent is reasonable for an office properly equipped to give good service.

In comparing a business executive receiving $20,000 a year with a lawyer, people are apt to assume that $20,000 paid to the latter will put the two on an equal basis. Such an assumption overlooks that the actual cost of the executive to his enterprise requires adding to his personal salary the salary of his secretary, rent of the space personally occupied, and some proportion of other expenses. These additions must be made to get any fair comparison between the compensation and the value of work done by the business man and by the lawyer respectively.



Henry Adsit Bull

5. Maximum number of productive hours and basic hourly rate. In figuring possible productive days the following deductions should be made:

Sundays throughout the year ..	52
Saturdays throughout the year ..	52
Legal holidays	6
Vacation 3 weeks of 5 days each	15
	125

Saturdays are half days, amounting to 26 on maximum working basis. Every lawyer of the type now being considered answers calls for service on public, educational, and charitable matters taking many days during the year. Some work is done without pay, and some time is necessarily spent on office accounts and arrangements and

other work not directly productive. The deduction of all Saturdays, leaving five working days in the regular week, seems a fair way to meet those features of law practice. Deducting 125 from 365 leaves 240 possible productive days. Dividing by 240 the total gross earning reached under element 4 above will give a basic daily rate.

Working hours may be figured from 9 to 5. Allowing one hour for lunch and one hour for interruption, correspondence, and small details for which no charge can be made, leaves six hours of possible productive work per day. Dividing the basic daily rate by 6 gives a basic hourly rate. Recalling the discussion of expenses under 4 above, it must be remembered that about one-third of this basic rate represents cost of carrying on the office, leaving only two-thirds as the actual return to the lawyer for his services. Consequently a reduction of 10 per cent on a basic rate of $12 for example would actually take $1.20 from $8 (the lawyer's return after paying office cost), making a reduction of 15 per cent in his actual pay.

6. Allowance for hours yielding less than basic rate. This factor is difficult to estimate. All regular clients not paying annual retainers must realize that their lawyer's office handles some matters for them at less than cost because an adequate charge would consume the amount involved, or would add an expense on an unprofitable transaction which the client would feel more burdensome than a charge of double the amount for less time and effort on a transaction showing a profit to the client. A lawyer also takes up some matters for people who seem to have just claims, but no means with which to pay; and if his best efforts produce no results, because necessary evidence cannot be obtained, or the adverse party proves financially irresponsible, the time so spent is a complete loss, and the office expense apportioned to it must be made up on other jobs. The same is true of credit risks and losses. Every contractor knows this experience, and every business man recognizes the necessity, in the case of a contractor, to realize a satisfactory profit from the whole year in order to continue in business at all. Clients sometimes fail to realize the same necessity in the case of the lawyer, and the extent to which their particular matters figure, and should figure, in the lawyer's general result.

This element No. 6 in our outline is the only place, also, for taking account of slight illnesses, causing no interruption in the business man's income, but practically stopping the lawyer's gross receipts.

Care and efficiency will keep these losses down; but after all efforts to reduce them, an element of chance remains, too variable to be estimated with any approach to accuracy. If the client will consider what reduction from this rate would satisfy himself and other clients for work on less important matters than we are discussing, he will then be in position to consider fairly and intelligently the final element; namely

7. A proper hourly charge on important matters. This must be enough higher than the average basic rate to make up for the larger number of matters involving small amounts, consuming time out of all proportion to results, and yet carrying a low rate of pay.

In the foregoing discussion all figures have been purposely avoided except where the use of them seemed desirable to make clearer the points set forth. Accompanying this paper is a form to be taken by the client, conveniently arranged for him to fill out according to his own ideas, after reading this paper, and then figure out the results for himself. It is believed that such action by any client on any important matter will tend to mutual sympathy and understanding in the fixing of a final charge. In most cases of friendly as well as professional relationship the client will

probably be willing (at some time before or after final agreement) to show his computation to the lawyer; and a few instances of this would be helpful to nearly any lawyer in improving his understanding of clients. All that can be asked, however, is that the client should conscientiously fill out the form with such figures as he would be willing to show to any fair-minded person of his own selection; and then meet his lawyer with the figures in his own mind. There will probably be some cases in which request to the client to fill out the form should be coupled with a promise by the lawyer not to ask to see it at any time.

1. I regard this job as calling for the attention of a lawyer with earning capacity annually of ... $.....
2. I regard my attorney as entitled to annual income from his practice of ..... $.....
3. The higher of these is ... $.....
4. Add for office expense 50% ..... $.....

   Total annual gross .. $.....
5. Divide by 240 to get daily rate ..... $.....
   Divide by 6 to get hourly rate ..... $.....
6. Considering contingencies, losses, and time which cannot be charged for at this rate, but must be offset by higher charges on important matters
7. I feel that a fair hourly charge on my matter would be ..... $.....

Progression Through Conflict

Truly it was the divine plan to reserve this continent for a purpose from the darkness and oppression of the old world to transplant men's highest aspirations to the new; that the principles of real freedom and the truths of real religion might come to full fruition in a virgin soil.

For this God built a continent and filled it with treasure. He pillowed it on the shouldering mountains, and carpeted it with rolling prairies, clothed it with forest and filled them with song, traced with His hand the course of its rivers and blessed it all with the smile of His love. Then He called to the nations of the earth and they came, the strongest and best, each bringing his gift and his hope. He inspired them with the love of liberty and brotherliness to all mankind, bade them build their homes and altars and to employ their time in useful toil; He transferred the seat of power to the new world; dedicated their government to the principle that "governments derive their just powers from the consent of the governed;" He blessed it with a purpose sublime and called it "America."

From the fringe of colonists along the coast the more hardy were lured to explore the wonders of the wilderness . . . the settlers came and the Mississippi became the scene of busy trade. Later God opened a pot of gold in California and the tide of immigration streamed across the plains. Mines were opened, cities sprang up, steel rails belted a continent, states were carved out and a new civilization was brought to light.

To our forbears the recurring danger was the call to conflict and they met it face to face. They fought with nature, savages and beasts, their courage grew with danger and with strength they strength opposed. The Cross found a new defender and its hope was reflected to the world.

—From Address by Robert R. Friend, Esq., before the Kentucky State Bar Association.

Precedent is a fruit of reason ripened by time.—*Baldwin.*

Accountants — *copy of tax return — duty to surrender.* That accountants employed as independent contractors to prepare an income tax return cannot be compelled to surrender to their employer copies of the return which they retain when the return is completed is held in the Massachusetts case of Ipswich Mills v. Dillon, 157 N. E. 604, annotated in 53 A.L.R. 792.

Accounting — *in case of tort — when denied.* That a court of equity will not decree an accounting in a case of tort, in the absence of fraud, is held in the Tennessee case of Nashville, C. & St. L. R. Co. v. Jenkins & Son, 296 S. W. 1, annotated in 53 A.L.R. 812.

Assault — *wanton attack — self-defense.* A person who, upon making demand for his cattle on premises where they are unlawfully detained, is subjected to a wanton and reckless assault and battery by the wrongdoers, causing him serious harm, is justified in shooting a dog which they cause to attack him, and is held not to be liable for injuries inflicted upon one of his assailants with a club in reasonable self-defense, in Arlowski v. Foglio, 105 Conn. 342, 135 Atl. 397, which is annotated in 53 A.L.R. 481, on self-defense by one who has rightfully entered on premises of his assailant.

Assault — *unauthorized removal of tonsils.* The unauthorized removal by a surgeon of a patient's tonsils is held to be a technical assault and battery in Hively v. Higgs, 120 Or. 588, 253 Pac. 363, annotated in 53 A.L.R. 1052, on character and extent of surgical operation authorized by patient.

Assumpsit — *recovery by one refusing effort to agree.* A vendee making a part payment under a binder, it is held in Keystone Hardware Corp. v. Tague, 246 N. Y. 79, 158 N. E. 27, 53 A.L.R. 610, cannot recover it thereafter if he wilfully refuses to make an honest effort to reach an agreement as to the details left open for subsequent adjustment.

This seems to be a case of first impression.

Assumpsit — *payment — mistake — recovery.* That money voluntarily paid, with full knowledge of all the facts under which it was demanded, cannot be recovered back upon the ground that payment was made under a misapprehension of the legal rights and obligations of the party paying, is held in Hadley v. Farmers' Nat. Bank, 125 Okla. 250, 257 Pac. 1101, annotated in 53 A.L.R. 943.

Bail — *when excessive.* That mere inability to procure bail in a certain amount does not of itself make such amount excessive is held in the Nevada case of Ex parte Malley, 256 Pac. 512, annotated in 53 A.L.R. 395, on amount of bail required in criminal action.

Brokers — *duty to inform owner of increase in value.* When a broker contracts to sell property at not less than a price named, and thereafter to his knowledge it has greatly increased in value, of which fact the owner is to his knowledge ignorant, it is held that he must inform the owner of the increase in value, in Eastburn v. Joseph Espalla, Jr. & Co., 215 Ala. 650, 112 So. 232, which is annotated in 53 A.L.R. 134.

Constitutional law — *deprivation of property — forbidding solicitation of claims.* An attorney is held not to be unconstitutionally deprived of a property right by being forbidden to solicit employment for prosecution of claims in personal injury cases, in Kelley v. Boyne, 239 Mich. 204, 214 N. W. 316, accompanied in 53 A.L.R. 273, by annotation on constitutionality of statute against solicitation of business by or for attorney.

Contracts — *building — destruction — insurance.* That a building contract provides that the owner shall carry fire insurance and the contractor pay pro rata of cost is held in the Mississippi case of United States Fidelity & G. Co. v. Parsons, 112 So. 469, not to raise an exception to the rule that the contractor must rebuild, if the building, before its completion, is destroyed by fire.

Annotation on who must bear the loss from destruction of, or damage to, building during performance of building contract, without fault of either party, is appended to this case in 53 A.L.R. 88.

Contracts — *effect of rescission on rights of third person.* Rescission by the parties of an agreement by one person to pay another's debts is held to be effective against creditors of the latter, unless they have acted upon the promise to their detriment in Clark & Co. v. Nelson, 216 Ala. 199, 112 So. 819, annotated in 53 A.L.R. 173, on mutual rescission of contract as affecting third person otherwise entitled to benefit of contract.

Discovery — *compelling corporation to produce papers.* A corporation, it is held in Keiffe v. La Salle Realty Co. 163 La. 824, 112 So. 799, cannot be made to respond to a subpœna duces tecum, when the order does not designate the president or some other officer or agent of the corporation through whom it may act.

The form and particularity of a citation of subpœna duces tecum for production of corporate books or documents is considered in the annotation appended to this case in 53 A.L.R. 82.

Dower — *inchoate — equitable protection.* An inchoate right of dower is held to be a substantial right entitled to the protection of a court of equity in the Arkansas case of Tatume v. Tatume, 295 S. W. 720, annotated in 53 A.L.R. 306, on protection of inchoate dower against exploitation of mineral resources, or other act in nature of waste, or which impairs value of land.

Easements — *use of way — additional burden.* The grant of a vehicular right of way is held in the Rhode Island case of Matteodo v. Capaldi, 138 Atl. 38, not to be limited to horse-drawn vehicles, customary at the time of the grant, but may be extended to travel by automobile, without increasing the burden upon the servient estate.

The question of automobile traffic as additional burden on right of way is treated in the annotation appended to this case in 53 A.L.R. 550.

Estoppel — *tax sale — use of initials.* A nonresident owner of land is held in the Missouri case of Woodside v. Durham, 295 S. W. 772, not to

be estopped from urging the invalidity of a tax judgment obtained against him on constructive service of process by publication, in which he was designated by his initials and his surname, instead of by the appellation under which he acquired title, by the fact that years after the tax sale, in signing a quitclaim deed of the premises, he used his initials and surname only, where no injury, inconvenience, or expense was caused to adverse parties thereby.

Annotation on use of initial instead of first or middle name in publication of notice in tax proceeding is appended to this case in 53 A.L.R. 884.

Evidence — *law student — privilege.* A client's privilege with respect to transactions with his attorney is held not to apply in favor of a mere student in his office, except so far as the student may act as agent or clerk for the attorney in the transaction in question, in the Rhode Island case of Wartell v. Novograd, 137 Atl. 776, which is accompanied in 53 A.L.R. 365, by annotation on persons other than client or attorney rendered incompetent by the privilege attaching to communications between client and attorney.

Evidence — *schedules by bankrupt — effect against trustee.* A bankrupt's admissions, in connection with his schedules, are held in Re Weissman, 19 F. (2d) 769, whether the bankruptcy is voluntary or involuntary, to be competent evidence against his trustee to prove the amount of his indebtedness on the date that he is alleged to have procured goods by fraud, consisting of false statements as to the amount of his indebtedness when the goods were bought.

Admission of bankrupt or insolvent before or during bankruptcy or insolvency proceedings as evidence against trustee in bankruptcy or assignee in insolvency, is the subject of the annotation appended to this case in 53 A.L.R. 644.

Evidence — *"res ipsa loquitur" — effect.* The rule of "res ipsa loquitur" is not a substantive rule of law. It is held in Glowacki v. Northwestern Ohio R. & P. Co. 116 Ohio St. 451, 157 N. E. 21, to be rather a rule of evidence which permits the jury, but not the court, in a jury trial, to draw an inference of negligence where the instrumentality causing the injury is under the exclusive management and control of one of the parties, and an accident occurs under circumstances where, in the ordinary course of events, it would not occur when ordinary care was observed. It is an evidential inference, not controlling upon the jury, but to be considered by the jury under proper instructions. A like inference under like circumstances may be drawn by the court when the court is the trier of the facts.

Annotation on "res ipsa loquitur" as a presumption or a mere permissible inference accompanies this case in 53 A.L.R. 1486.

Executors and administrators — *right to set aside conveyance of intestate.* That an administrator cannot maintain an action to set aside a conveyance of his intestate for fraud practised upon him, unless it is necessary for him to have the rents and profits and dispose of the property for the purpose of paying expenses, legacies, or just debts of the intestate, is held in the Wisconsin case of Neelen v. Holzhauer, 214 N. W. 497, annotated in 53 A.L.R. 359, on right of executor or administrator to set aside conveyance fraudulently procured from decedent.

Food — *protection of one industry against another.* That the legislature cannot, for the purpose of protecting the dairy industry against competition, prohibit the manufacture and sale of oleomargarin, is held in the Wisconsin case of Jelke Co. v. Emery, 214 N. W. 369, which is annotated on the constitutionality of statutes in relation to oleomargarin or other substitute for butter, in 53 A.L.R. 463.

Highways — *marker of safety zone — personal injury.* The placing by a city of iron markers at the outside corners of a safety zone at a car stop, in accordance with a uniform plan throughout the city, is held not to constitute negligence as matter of law, or render the municipality liable to a pedestrian falling over a marker to her injury, in District of Columbia v. Manning, 18 F. (2d) 806, annotated in 53 A.L.R. 167, on liability of municipality for injury due to device installed in street for regulation of traffic or protection of pedestrians.

Highways —*want of repair — darkening by smoke.* Permitting smoke from fires on a rubbish dump, the right to use which was obtained by the municipality, to darken an adjoining highway so that automobiles collide thereon, is held not to be a defect or want of repair in the highway within the meaning of a statute imposing liability on the municipality for injuries caused by such defects or want of repair, in the Massachusetts case of Earle v. Concord, 157 N. E. 628, annotated in 53 A.L.R. 762.

Injunction — *against keeping swine in town.* A town may enjoin the keeping of swine within its limits, without a permit, in violation of the regulations of the board of health, it is held in the Massachusetts case of Lexington v. Miskell, 157 N. E. 598, where the business is hurtful to the inhabitants of the town and accompanied with noisome and injurious odors, and the comfort and health of the public are involved.

The right to an injunction to restrain acts or course of conduct without the required permit or license from the public is treated in the annotation which follows this case in 53 A.L.R. 808.

Innkeepers — *sufficiency of information to charge.* That an innkeeper to whom property is delivered by a guest for safekeeping should be given such notice of its character that he may know that it is valuable and to be kept safely is held in Stoll v. Almon C. Judd Co. 106 Conn. 551, 138 Atl. 479, annotated in 53 A.L.R. 1042, on what information must be given by a guest upon delivering articles into the custody of an innkeeper.

Insurance — *policy — delivery to agent as delivery to insured.* Delivery of a policy of life insurance by the insurer to its agent, for unconditional delivery to the insured, is held, in the Maryland case of Mutual L. Ins. Co. v. Otto, 138 Atl. 16, to be a delivery to the latter within the meaning of a provision that it shall become void if, upon date of actual delivery, the assured is not alive and in sound health.

Annotation accompanies this case in 53 A.L.R. 487, on what amounts to a "delivery" or an "actual delivery" to insured, within the express provision of insurance policy.

Insurance —*applicability of policy to loss — intent of parties.* The applicability of a fire insurance policy to a loss, due to the subsequent fall upon the insured building of a neighboring wall weakened at the time of a fire, is held to be determined by the intention of the parties to the insurance contract, in the Maryland case of Automobile Ins. Co. v. Thomas, 138 Atl. 33, annotated in 53 A.L.R. 669, on damage to insured building from collapse of neighboring building during or after a fire therein as within fire insurance policy.

Insurance — *breach of condition as to one item — effect.* Violation by an insured in a policy insuring as separate items his stock and fixtures, of a condition limiting the amount of additional insurance on the fixtures, it is held, will not prevent recovery for loss of the stock, in Trakas v. Globe & R. F. Ins. Co., 141 S. C. 64, 139 S. E. 176, annotated in 53 A.L.R. 1119, on divisibility of fire insurance policy covering stock and fixtures or furniture.

Insurance — *goods in warehouse — rights of owner.* The owner of cot-

ton which is damaged by fire while in storage is held to be entitled to share in the benefit of insurance secured by the warehouseman, without the knowledge of the owner, on all the cotton in the warehouse in Edwards v. Cleveland Mill & Power Co., 193 N. C. 780, 138 S. E. 131, annotated in 53 A.L.R. 1404, on right in proceeds of insurance taken out by warehouseman on goods stored.

Landlord and tenant — *implied agreement to execute lease.* That an agreement of the owner to enter into a lease may be implied from a written proposition by another to lease his property, which is signed by such owner, is held in the Wisconsin case of Ullman v. Bee Hive Dept. Store, 214 N. W. 349, 53 A.L.R. 281.

This seems to be a case of first impression.

Landlord and tenant — *liability of landlord for injuries caused by use of premises.* To render a landlord liable for injuries to adjoining property by the tenant's use of the leasehold, the injuries, it is held in Midland Oil Co. v. Thigpen, 4 F. (2d) 85, must necessarily result from the reasonable, ordinary, and expected use of them by the tenant, or from the purpose for which they were leased.

Annotation on landlord's liability for damage to property of third person by operations of tenant is appended to this case in 53 A.L.R. 311.

Landlord and tenant — *eviction — abatement of rent.* A lessee who uses the second story of the leased building as a garage and repair shop to which automobiles are conducted by the use of a bridge from an adjacent alleyway, lying on a level with the second story, cannot, it is held in Blomberg v. Evans, 194 N. C. 113, 138 S. E. 593, claim an eviction from the premises, or an abatement of his monthly rental therefor, when the alleyway is graded down by the owners of neighboring property so as no longer to serve his purpose, where the change in conditions was not caused by the lessor or by one whose title was paramount to his.

Interference by one other than lessor with means of access to property, as affecting rights of lessor and lessee, is treated in the annotation which accompanies this case in 53 A.L.R. 686.

Landlord and tenant — *award of appraisers — grounds for setting aside.* That a court of equity will not set aside an award stipulated by the parties to be final, of appraisers appointed to value buildings erected by a lessee, unless they have mistaken their authority, departed from the submission, clearly misconceived their duties, acted upon some fundamental and apparent mistake, or have been moved by fraud or bias, is held in Ice Service Co. v. Phipps Estates, 245 N. Y. 393, 157 N. E. 506, annotated in 53 A.L.R. 692, on conclusiveness of appraisal of buildings or other improvements under provision for compensation to tenant on termination of lease.

Libel — *clergyman — injury in his calling.* An editorial which criticizes the conduct and literary attainments of a clergyman in reference to a controversy concerning evolution, and is calculated to expose him to contempt, hatred, scorn, or ridicule, and to injure him in his vocation, is held to be libelous per se, in Pentuff v. Park, 194 N. C. 146, 138 S. E. 616, annotated in 53 A.L.R. 626, on what imputations against a clergyman are actionable.

Master and servant — *unsafe telephone — liability.* It is held, in Howard v. Jones Store Co. 123 Kan. 620, 256 Pac. 1019, to be the duty of an employer to furnish his employee a safe place to work and safe instrumentalities to do the work, whether such instrumentalities are directly provided and furnished by the employer, or were procured from, and installed by, another.

The liability of an employer for an injury to his employee from a defective telephone is treated in the annotation which follows this case in 53 A.L.R. 139.

Master and servant — *negligence in continuing work — knowledge of discomfort.* An illiterate employee engaged in caring for railroad cars, who knows nothing of chemical gases and the resulting effect of fumigants, is held not to be negligent, in the Kentucky case of Louisville & N. R. Co. v. Gilliland, 295 S. W. 422, in continuing to work, upon reassurance by his foreman, after he knows that the fumigants used burn his eyes, nose, and throat, so as to prevent his holding his employer liable for injury caused by such fumigants.

Annotation on master's liability for injury to servant by disinfectant or similar substance follows this case in 53 A.L.R. 386.

Negligence — *of hunter — care required.* Due care, it is held in the New Hampshire case of Webster v. Seavey, 138 Atl. 541, may require a hunter who hears a rustling in and sees a moving of bushes to refrain from shooting without doing what is reasonably required to find out what causes the commotion, even though he entertains the belief that the object before him is a deer, if he knows that there is an inconspicuously clad hunter in the woods.

Annotation on liability for unintentionally shooting person while hunting is appended to this case in 53 A.L.R. 1202.

Reward — *for conviction of offender — performance in reliance on offer.* One claiming a reward offered by a bankers' association for the arrest and conviction of any person burglarizing a member bank, is held not to be entitled thereto unless he performed the services for which the reward was offered, with knowledge of and reliance upon the offer, in Arkansas Bankers' Asso. v. Ligon, 295 S. W. 4, annotated in 53 A.L.R. 534, on knowledge of reward as condition of right to claim it.

A.L.R. Annotations in Volume 53 Include These Subjects:

Annotation concentrates to a focal point the learning on a subject.

Accord and satisfaction — Counterclaim or set-off as affecting rule as to part payment of a liquidated and undisputed debt. 53 A.L.R. 768.

Amusements — Duty and liability of owner or keeper of place of amusement respecting injuries to patrons. 53 A.L.R. 855.

Appeal — Failure of obligee in supersedeas bond to accept protection thereof, or his act inconsistent therewith, as affecting liability on bond. 53 A.L.R. 807.

Assault — Homicide or assault in connection with use of automobile for unlawful purpose or in violation of law. 53 A.L.R. 254.

Associations — Legal rights and remedies in respect of funds raised by voluntary committee for public or quasi public purpose. 53 A.L.R. 1237.

Assumpsit — Rights and remedies of holder of draft issued under letter of credit which is dishonored. 53 A.L.R. 57.

Attorneys — Criticism of opinion or decision of court as ground for disbarment of attorney. 53 A.L.R. 1244.

Bankruptcy — Claim of government as within provision of bankruptcy or insolvency law fixing time for presentation of claims. 53 A.L.R. 572.

Banks — Trust or preference in respect of funds deposited by executors, administrators, testamentary trustees, or guardians. 53 A.L.R. 564.

Bills and notes — Seal as affecting negotiability and qualities of paper under Negotiable Instruments Law. 53 A.L.R. 1173.

Buildings — Power to establish building line along street. 53 A.L.R. 1222.

Buildings — Validity of statute or ordinance in relation to doors. 53 A.L.R. 920.

Carriers — Redemption of unused or partly used carrier's ticket. 53 A.L.R. 1229.

Constitutional law — Constitutionality of statutes imposing absolute liability on private persons or corporations, irrespective of negligence for breach of a specific statutory duty, for injury to person or property. 53 A.L.R. 875.

Constitutional law — Constitutional or statutory changes affecting grand jury or substituting information for indictment as an ex post facto law. 53 A.L.R. 716.

Constitutional law — Constitutionality of provisions of Workmen's Compensation Law applicable to public officers or employees. 53 A.L.R. 1290.

Constitutional law — Constitutionality of statute which extinguishes or impairs lien of special assessments on sale of property for taxes. 53 A.L.R. 1140.

Constitutional law — Schools; extent of legislative power with respect to attendance and curriculum. 53 A.L.R. 832.

Courts — Validity of ordinance as affected by motives of persons who procured its adoption. 53 A.L.R. 942.

Criminal law — Illness or death of member of juror's family as justification for declaring mistrial and discharging jury in criminal case. 53 A.L.R. 1062.

Damages — Pecuniary value of services rendered by deceased without legal obligation as element of damages for his death. 53 A.L.R. 1102.

Get the R. C. L. Habit

Domicil — Separate domicil of married woman or divorced woman as affecting citizenship, domicil, residence, or inhabitancy of children. 53 A.L.R. 1160.

Easements — Implied easement upon severance of tract where building is near or encroaches upon the dividing line. 53 A.L.R. 910.

Easements — Rights, privileges, or easements of public, its grantees or licensees, on land bordering on navigable water. 53 A.L.R. 1191.

Eminent domain — Combination of public and private uses or purposes. 53 A.L.R. 9.

Evidence — Admissibility of evidence obtained by government or other public officer by intercepting letter or telegraph or telephone message. 53 A.L.R. 1485.

Evidence — Presumption and burden of proof as to carrier's responsibility for goods received in good condition and delivered to consignee in bad condition. 53 A.L.R. 996.

Evidence — Presumption or burden of proof as to whether or not instrument affecting title to property is recorded. 53 A.L.R. 668.

Executors and administrators — Claim of government as within provision of statute fixing time for presenting claims against decedent's estate. 53 A.L.R. 569.

Garnishment — Of fire insurer. 53 A.L.R. 724.

Gift — Donor's own check as subject of gift. 53 A.L.R. 1119.

Highways — Liability for injuries resulting from failure of independent contractor to guard opening in sidewalk while delivering merchandise, etc. 53 A.L.R. 932.

Injunction — To prevent tenant in arrears for rent from removing chattels or improvements not constituting fixtures. 53 A.L.R. 294.

Insurance — Duty of insured under provision of policy requiring separation of damaged and undamaged property, and inventory of the same. 53 A.L.R. 1113.

Insurance — Effect on insurance contract of wagering assignment thereof. 53 A.L.R. 1403.

Insurance — Extension of time for payment of premium or assessment as within statute prohibiting discrimination by insurance companies. 53 A.L.R. 1537.

Insurance — Practice of taking notes for premiums as waiver of requirement of payment as to premium for which note was given. 53 A.L.R. 915.

Joint creditors and debtors — Release of one of several joint and several contract obligors as affecting liability of other obligors. 53 A.L.R. 1420.

Judgment — Foreign judgment based upon, or which fails to give effect to, a judgment previously rendered at the forum, or in a third jurisdiction. 53 A.L.R. 1146.

Judgment — In action for death as a bar to an action for the same death in another jurisdiction or under another statute. 53 A.L.R. 1275.

Jury — Power of court to reduce or increase verdict without giving party affected the option to submit to a new trial. 53 A.L.R. 779.

Landlord and tenant — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se. 53 A.L.R. 686.

Libel — Bank's return of a check or bill to holder without presentation to the drawee as libel upon drawer. 53 A.L.R. 800.

Libel — Privilege of communications between government officials as affected by their general publication. 53 A.L.R. 1526.

License — Licensing and regulation of pool and billiard rooms and bowling alleys. 53 A.L.R. 149.

Limitation of actions — Against tenant for years or for life for waste or breach of obligation as to use and care of property. 53 A.L.R. 46.

Limitation of actions — Tacking disabilities for purposes of the Statute of Limitations. 53 A.L.R. 1303.

Mechanics' liens — Priority as between mortgage for future advances and mechanics' liens. 53 A.L.R. 580.

Municipal corporations — Personal liability of municipal officer or employee for negligence in performance of duty. 53 A.L.R. 381.

Negligence — Attractive nuisances. 53 A.L.R. 1344.

Negligence — Status of, and liability for injury to, one accompanying owner of car to garage or parking place. 53 A.L.R. 82.

Officers — Distinction between office and employment. 53 A.L.R. 595.

Police — Personal liability of peace officer or his bond for negligence causing damage to property. 53 A.L.R. 41.

Payment — Of tax by check or draft. 53 A.L.R. 194.

Quo warranto — As a remedy for violation of criminal or penal statute by corporation. 53 A.L.R. 1038.

Subrogation — Payment of entire claim of third person as condition of subrogation. 53 A.L.R. 304.

Taxes — Constitutionality of statute impairing or postponing lien for taxes. 53 A.L.R. 1134.

Taxes — When individual deemed an "inhabitant" of the state within taxing law. 53 A.L.R. 1394.

Usury — Expenses or charges (including taxes) incident to loan of money. 53 A.L.R. 743.

Usury — Requiring borrower to pay insurance premium on property mortgaged as security. 53 A.L.R. 761.

Waters — Riparian rights in ponds left by receding water of stream. 53 A.L.R. 1156.

Waters — Right of riparian owner to embank against flood or overflow water from stream. 53 A.L.R. 1180.

Wills — Membership in, or other connection with, club, society, association, or corporation as disqualifying one as witness to will in which it is beneficiary. 53 A.L.R. 211.

Wills — Revocation of later will as reviving earlier will. 53 A.L.R. 521.

Workmen's compensation — "Dependency" within workmen's compensation acts. 53 A.L.R. 218.

Workmen's compensation — Illness or injury due to artificial temperature as compensable. 53 A.L.R. 1095.

Workmen's compensation — Injury or death due to elements. 53 A.L.R. 1084.

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Psychiatry and the Criminal Law.—This is the subject of an interesting article by Mr. Sheldon Gluck in 14 Virginia Law Review, 155. He mentions the recommendation of the International Prison Congress of 1925, "that the trial process be divided into two parts, the first to be concerned with the determination of the factual question of guilt or innocence, the second, from which the public should be excluded, to deal only with treatment. . . . If such scientific procedure were adopted, it would eventually have its influence upon the substantive criminal law, its definitions, its modes of legal analysis, and its 'tests' of the irresponsibility of the insane."

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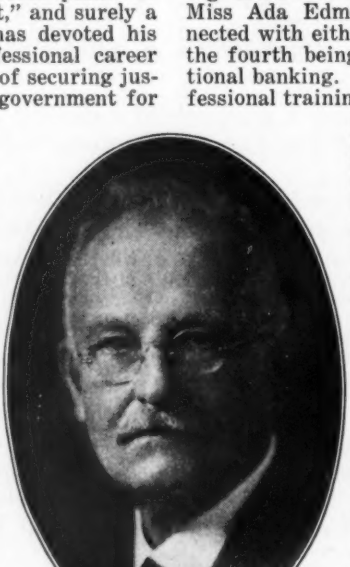
State Control of Public Education.—In a discussion of the Scopes Case in 6 Tennessee Law Review 153 (April 1928), Mr. Robert S. Keebler writes: "The patient, honest, and thorough investigation of facts, whether of history or of science, and the generalizations of law or theory which careful and honest students may deduce from these facts cannot possibly be regarded as subversive to any view of religion or Deity which it is the legitimate object of the state to foster or defend. . . .

An Advocate of the People

By O. R. McGUIRE

"JUSTICE," said Bacon, "is one of the four pillars of government," and surely a man who has devoted his entire professional career to the task of securing justice from a powerful government for countless hundreds of his fellow citizens has not only performed a service for them, but, of transcendental importance, he has rendered a great public service in upholding the pillars of government for which no fee can ever be given save that of the love and recognition of the members of his profession. Such a man is George A. King of Washington, D. C., and the recent occurrence of his seventy-third birthday affords an excuse to contribute this brief survey of his life and work.



George A. King

Mr. King was born in Minneapolis, Minnesota, on February 10, 1855, or fourteen days previous to the establishment of the Court of Claims of the United States, which has been the principal forum of his professional work. His father, though English by birth, enlisted in the Union Army shortly after the outbreak of the Civil War, but advanced years made field service impracticable, and his professional attainments were such that the Army authorities transferred him to Washington, where the family has since continued to reside. This martial ardor seems not to have been limited to the father, for three of Mr. King's four children resulting from his marriage in 1881 to Miss Ada Edmonston are now connected with either the Army or Navy, the fourth being engaged in international banking. The literary and professional training of Mr. King was secured in Gonzaga College and the Columbian College, now the George Washington University, from which he graduated in both the literary and law departments. As first established, the Court of Claims was a fact-finding body to assist Congress and its committees in considering numerous claims against the government. The Supreme Court of the United States refused to review these so-called judgments (see Gordon v. United States, 2 Wall. 561, 17 L. ed. 921), and the jurisdictional statute was amended in 1863 so as to remove their objectionable feature of lack of finality. Thereafter appeals from the Court of Claims were regularly entertained in the Supreme Court of the United States until the Act of February 13, 1925, 43 Stat. 936, substituted the writ of certiorari for appeals. Mr. King appeared at the bar of the Court of Claims with his first case reported in 15 Ct. Cl. 382, and all of the subsequent volumes contain numerous cases in which he appeared as counsel for claimants. Many of these cases were appealed to the Supreme Court of the United

States when Mr. King did not believe he had obtained justice for his clients and when the jurisdictional amount of $3,000 was satisfied, or by the United States when counsel representing the government believed that he had obtained more than justice. A result of such appellate proceedings is that, with three or four exceptions, Mr. King has argued more cases at the bar of the Supreme Court of the United States than any other living lawyer.

However, it is not with reference to this vast amount of work which Mr. King has done in approximately half a century to which I would direct attention, but to the public service he has rendered in doing the work. It has been said that this is a "government of laws and not of men," but this statement is a mere play upon words, for, in any event, the government is administered by men. Until the enactment of the Civil Service Law of January 16, 1883, 22 Stat. 403, it was customary with the inauguration of each new national administration to discharge all persons holding positions of any importance in the Federal service. It was not until Roosevelt was made one of the Civil Service Commissioners that the Civil Service Law began to properly function, and prior thereto all of the vast and intricate details of government were in the hands of incompetents; at least, until the new appointees had been in office sufficient time to enable them to secure some information concerning their duties. Whatever may have been the law, many of these appointees did not know it, and when they refused to settle a claim in accordance with the law, there was no resort save to Congress or to the Court of Claims, and, since 1887, with the exception of customs and internal revenue claims, to the United States district courts.

The enforcement of the Civil Service Law, and the statutes protecting Army and Navy officers from removal except for certain specified causes, contributed to the efficiency of the administrative branch of the government, but the difficulties of the citizen therewith have not disappeared. This security in tenure has frequently led administrative officers to have rather fixed opinions as to the law applicable to a matter in dispute, making it necessary to resort either to Congress for a change in the law, or to the courts for a judicial decision on the point.

It can readily be seen that in the presentation of a case to the Court of Claims or to the district courts, in the nature of an appeal from the action taken by administrative officers, Mr. King not only rendered service to his clients, but he has rendered a high degree of public service in securing clarification of the point in issue, contributing to the general satisfaction of the people with the government. The decisions of the courts have often led to changes in administrative opinions and practices, and thus made it unnecessary for other claimants having similar claims to resort to the courts to secure justice.

After all, the actual administration of the laws of the United States is in the hands of the administrative branch of the government—a veritable no-man's land. It is subject to legislative, executive, and judicial control with no clear line of demarcation of responsibility to any of these branches. A carefully considered judicial opinion is of great aid to the officers of the administrative branch of the government in the discharge of their duties and the man whose professional labors have aided in the development of our large body of administrative law has made a real contribution to the public welfare. By such labors Mr. King has fully earned the title of "An advocate of the people," and despite the fact that he has passed the allotted three score and ten years, his pursuit of justice and labors in behalf of the people continue unabated as the senior member of the firm of King & King, a genial and lovable man.

Who mixed reason with pleasure and wisdom with mirth.—*Goldsmith.*

In 1950.—Traffic Judge—"What's the charge?"

Air Cop—"Wrong side of the cloud."

Traffic Judge—"Fifty and costs. Next case!"—Capper's Weekly.

Pie-eyed.—Judge—"What is the charge, officer?"

Officer—"Driving while in a state of extreme infatuation."—Princeton Tiger.

A Humid Time Promised.—A farmer applied at a bank for a loan of $100, relates Forbes, and during the dicker he said: "Well now, suppose at the end of six months this note 'perspires' and I ain't able to pay you, what then?"

"In that event," replied the banker promptly, "we'd make you sweat for it."

—Boston Transcript.

Justice.—"What did that bootlegger get in police court this morning?"

"A couple of new customers."—Life.

Back Talk.—"For two cents," said the policeman angrily, "I'd run you in."

"Good thing you made it two," declared the bold bad college youth, "because one copper couldn't do it."

—Boston Transcript.

Law-Abiding Citizen.—Not long ago Deacon Miller bought a horse and buggy and took his wife out one Sunday for a drive. They came to our neighboring town of Osseo and saw a sign which read, "Speed limit, fifteen miles per hour."

"Here, ma," said the deacon excitedly, "you take the lines and drive, and I'll use the whip. Maybe we can make it."

—Life.

The Quick Lunch.—Albert D. Lasker, former head of the Shipping Board at a luncheon in Chicago told a story of a lawyer who put a notice on his door:

" 'Out to lunch. Back in an hour.'

"He was a struggling young lawyer, and he didn't want to lose any clients who might turn up in his absence; so he added to the notice:

" 'Been gone fifty minutes already.' "

—Philadelphia Bulletin.

Bits from British Courts.—Nottingham Magistrate—You should try to regulate your wife.

Man—She is not a clock, or I might.

—

Motorist in Court—I can pull up my car in thirty yards.

Magistrate—Poor consolation to me if I am knocked down in twenty.

—

Counsel (cross-examining prejudiced witness)—I suggest that Mrs. Gibbons is anathema to you.

Witness—Then you suggest wrong. It's only my friends that I calls by their Christian names.—Boston Transcript.

Not Quite.—Hobbs—I understand you've got rid of your loud-speaker.

Dobbs—Well, not exactly. I'm still paying her alimony.

A Preponderance of Evidence.—Judge—Do not deny it any more—three persons have testified that they saw you steal.

Accused—What are three persons? I can bring millions who did not see me.

—Nebelspalter, Zurich.

Both Sides.—Counsel—Now, tell the court how the accident happened.

Witness—Well, the car shot out of the garage, exceeding the speed limit, knocked the fellow flat on his back and ran over him. The fellow was slightly intoxicated, stepped in front of the car, which was going 10 miles an hour, was softly brushed aside and—

"What! How could it happen both ways?"

"Don't ask me, I'm just telling both sides of it." —Judge.

That Was Handiest.—Judge—Will you please tell the jury, Mrs. Johnson, what pretext your husband had for beating you?

Mrs. Liza Johnson—Lawzee, Mistah Jedge, he didn't have no pretex'. He used a clothes pole. —Capper's Weekly.

An Inquisitive Cuss.—"Have you a good landlord?"

"Excellent. His only fault is an overwhelming curiosity; he is always asking when I am going to pay my rent."

—Boston Transcript.

Unbelievable.—Judge: "Drunk again? I'll let you off this time if you will tell me where you got it."

Prisoner: "A Scotchman gave it to me."

Judge: "Sixty days for perjury."

—The Pepper Box.

Raising the Ante.—The auctioneer, who had been whispering excitedly to a man in his audience, held up a hand for silence.

"I wish to announce," he said, "that a gentleman here has had the misfortune to lose a wallet containing five hundred pounds. He tells me that a reward of twenty-five pounds will be given to any one returning it."

After a silence a man in the crowd shouted: "I'll give thirty pounds."

—Tit-Bits.

Paying for His Fun.—Judge—"Beating your wife again, eh? Well, I'll just fine you $6.60." Accused—"What's the odd sixty for, Judge?" "Amusement tax—next case." —America's Humor.

Has Another Think Coming.—Pickpocket (visiting friend in jail)—Hired a lawyer for yer this morning, Slim, but I had to hand him me watch as a retainer.

Pal—And did he keep it?

Pickpocket—He thinks he did.

Aggravating Delay.—She—I hear that your old aunt has a will of her own.

He (tired of waiting)—I know she has. I only wish she'd give us a chance to probate it. —Boston Transcript.

The Strenuous Life.—Judge—Why have you not made these alimony payments?

Defendant—I can't start till week after next, Judge. There are still two instalments due on the engagement ring.

—Life.

Pitiful Delusion.—Doctor: Has there ever been any insanity in your family?

Modern Wife: Well, my husband thinks he's boss.

—Chicago Herald Examiner.

Might Have Been Worse.—"The verdict was most unexpected. It took my breath away."

"You recovered nothing?"

"Well, yes, my breath."

—Boston Transcript.

Justifiable Violence.—Judge: "I can't understand a big husky man like you beating a poor frail little woman like your wife!"

"But she keeps nagging and taunting me until I lose my temper!"

"What does she say?"

"She yells, 'Hit me! I dare you! Go ahead! Just hit me once and I'll have you dragged up before that baldheaded old fossil of a judge.'

"Case dismissed." —Law Leaves.

Superfluous Equipment.—Magistrate—The police say that you and your wife had some words.

Prisoner: I had some sir, but I didn't get a chance to use them.

—V. M. I. Sniper.

They Usually Are.—Lawyer—You say you passed this big truck near Scott's Corners? Did you notice anything peculiar about it?

Witness—Yes; it wasn't in the middle of the road. —Life.

It's All of That.—Speaking of Irish bulls, here's a clipping from a Galway newspaper:

"To rob a man of his purse and then maltreat him for not having it, would pass muster amongst pitiless, brutal crimes, but to kill and slay a man to the point of death and then murder him for not dying quick enough is one point better in the catalogue of human infamy." —Boston Transcript.

Bad Company for Him.—A Scot haled before the court for drunkenness gave as his excuse that he had traveled from Glasgow in bad company.

"What sort of company?" asked the magistrate.

"A lot of teetotalers," was the startling response.

"What, sir!" said the magistrate, "do you mean to say that abstainers are bad company? I think they are the best company for such as you."

"Beggin' your pardon," answered the Scot, "ye're wrang, sir, for I had hale mutchkin o' whusky an' I had to drink it by mysel'." —Boston Transcript.

Rainy Weather.

Mackintosh v. Fatman, 38 How. Pr. 145.

Conflicting Evidence.

Lie v. Lie, 96 Misc. 3, 159 N. Y. Supp. 748.

Names Fit and Unfit.

Speaking of names, a correspondent informs us that one Oscar Luck is bankrupt in England because of his losses on the turf, and in Manchester Thomas Neverstop is in jail for speeding through two traffic signals.

—Boston Transcript.

The Age Long Strife.

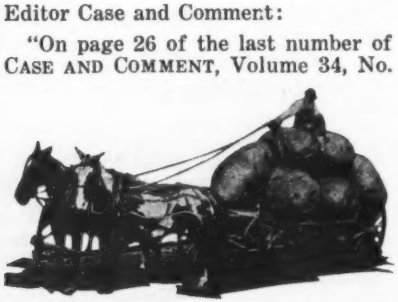
As a golfer lawyer I note that even way back in the times of the 102 U. S. page 556, 26 L. ed. 229, a "good man" had trouble with Niblack, and yesterday my niblick just threw sand in my face and failed to get my ball out of the trap, so that the old fight of good men versus niblicks continues until this day.

—Will H. Krause, Washington, D. C.

TEXAS POTATOES AND PUMPKINS

Editor Case and Comment:

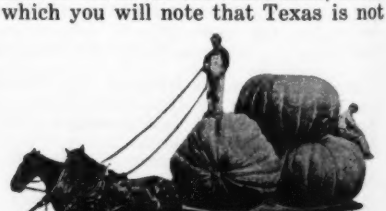
"On page 26 of the last number of CASE AND COMMENT, Volume 34, No.



1, I read a very interesting and illuminating item on Texas potatoes.

"The last lines of the item in question seem to convey to me the idea that you are a bit dubious about the truth of the remarks of your Texas correspondent, and, being a native of the Lone Star State myself, I hasten to his support, and from my collection of postcards send you one that was sent to me from Houston, Texas, on July 26, 1909, when visiting in Vera Cruz, Mexico, from which you will note that six tubers are about all that can be piled on a two-horse team.

"In order to further emphasize your statement that 'Texas is a great state,' I also enclose another postcard sent to me about the same time, from which you will note that Texas is not



a bit behind when it comes to producing pumpkins.

"Yours very truly,
"E. L. Ramsey."

Dayton, Ohio.